

*Instrument prepared by*

**VIRGINIA GAS AND OIL BOARD**

*Order recorded under:*

**CODE OF VIRGINIA  
§ 45.1-361.26**

**BEFORE THE VIRGINIA GAS AND OIL BOARD**

**RELIEF  
SOUGHT:**

An Order for Disbursement of Escrowed Funds  
(and Authorization for Direct Payment of Royalties)

**JURISDICTION:**

Code of Virginia § 45.1-351. (et seq) AND § 45.1-361.22 (et seq) AND § 45.1-361.22:2

UNIT/WELL NAME: C33

TRACT(S): 3

LOCATION: BUCHANAN County, Virginia

**DOCKET NUMBER:** VGOB-11-1220-3008-01

**APPLICANTS:**

CNX Gas Company LLC on behalf of Derek Browning Rogers, Gregory Poulos, Jason Poulos,  
Kevin Rogers, Pamela Poulos, Shaun Rogers, T.G. Rogers, III

**HEARING DATE AND LOCATION:**

Russell County Government Center, Lebanon, Virginia  
July 21, 2015

**APPEARANCES:**

Mark A. Swartz on behalf of CNX Gas Company LLC

**PRIOR PROCEEDINGS:**

1. Supplemental Order.

**NOTICE:**

The Unit Operator gave notice to the Applicants that the Board would consider its disbursement petition at the July 21, 2015 hearing and considered whether to:

- (1) Amend the Pooling Order to provide for the disbursement of funds on deposit in the Escrow Account attributable to Tract(s) 3 identified in the attached petition.
- (2) Delete the requirement that the Unit Operator place future royalties attributable to Tract(s) 3 relative to the interests of the Applicants identified in the attached petition.

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(3) Close the escrow account under this docket number.

**FINDINGS:** Code of Virginia § 45.1-361.22 AND § 45.1-361.22.2

Applicant has certified and represented to the Board that:

T.G. Rogers, III, Derek Browning Rogers, Kevin Rogers, Shaun Rogers, Gregory Poulous, Jason Poulous, and Pamela Poulous is entitled to 100% of the CBM royalties awarded under Case No. 550-13, Opinion dated July 10, 2014. Said decision allows the Applicant and Designated Operator to pay royalties directly to the person(s) identified in Exhibit EE annexed hereto and the annexed Table, further, specifies how said royalties are to be paid.

There are no remaining conflicts after the disbursement, escrow is no longer required and account is to be closed after disbursement.

RELIEF GRANTED:

VGOB Disbursement

Unit C33

VGOB-11-1220-3008-01

Table 1

Tracts: 3

[illegible]

1. The Escrow Agent is ordered, to within ten (10) days of receipt of this executed order, disburse funds for the unit and applicants detailed in Table 1.

2. The Escrow Agent is ordered to close the Escrow Account for the Subject Drilling unit based on the attached Revised Exhibit E which replaces all prior Exhibit E's recorded for the Subject Drilling Unit.

**CONCLUSION:**

Therefore, the requested relief and all terms and provisions set forth above be and hereby are granted and IT IS SO ORDERED.

**APPEALS:**

Appeals of this Order are governed by the provisions of the Code of Virginia § 45.1-361.9 which provides that any order or decision of the Board may be appealed to the appropriate circuit court and that whenever a coal owner, coal operator, gas owner, gas operator, or operator of a gas storage field certificated by the State Corporation Commission is a party in such action, the court shall hear such appeal de novo.

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DONE AND EXECUTED this 23 day of July, 2015 by a majority of the Virginia Gas and Oil Board.



Chairman, Bradley C. Lambert

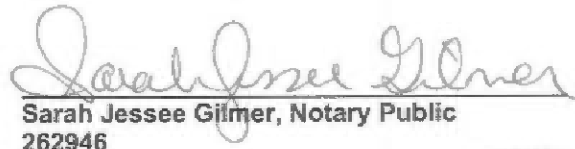
DONE AND PERFORMED this 23 day of July, 2015 by Order of the Virginia Gas and Oil Board.



Rick Cooper  
Principal Executive to the  
staff, Virginia Gas and Oil Board

COMMONWEALTH OF VIRGINIA  
COUNTY OF RUSSELL

Acknowledged on this 23rd day of July, 2015, personally before me a notary public in and for the Commonwealth of Virginia, appeared Bradley C. Lambert, being duly sworn did depose and say that he is the Chairman of the Virginia Gas and Oil Board and appeared Rick Cooper, being duly sworn did depose and say that he is Principal Executive to the staff of the Virginia Gas and Oil Board, that they executed the same and was authorized to do so.



Sarah Jessee Gilmer, Notary Public  
262946

My Commission expires: July 31, 2017



## BEFORE THE VIRGINIA GAS AND OIL BOARD

PETITIONER: CNX Gas Company LLC

DIVISION OF GAS AND OIL

DOCKET NO: VGOB 11-1220-3008-01

RELIEF SOUGHT: (1) DISBURSEMENT FROM ESCROW REGARDING TRACT(S) 3 (2) AND  
AUTHORIZATION FOR DIRECT PAYMENT OF ROYALTIES

HEARING DATE: July 21, 2015

DRILLING UNIT: C33

BUCHANAN COUNTY, VIRGINIA

## PETITION FOR ORDER OF DISBURSEMENT OF ESCROW FUNDS

**1. Petitioner and its counsel**

Petitioner is CNX Gas Company LLC, 627 Claypool Hill Mall Road, Cedar Bluff, VA 24609, (276) 596-5075. Petitioner's counsel is Mark A. Swartz, Hillard & Swartz, LLP, 122 Capital Street, Suite 201, Charleston, WV 25301.

**2. Relief Sought**

(1) the disbursement of escrowed funds heretofore deposited with the Board's Escrow Agent(s) attributable to Tract(s) 3 as depicted upon the annexed Table ; and (2) authorization to begin paying royalties directly to the parties to the prevailing plaintiff(s): T.G. Rogers, III, Derek Browning Rogers, Kevin Rogers, Shaun Rogers, Gregory Poulos, Jason Poulos, and Pamela Poulos

**3. Legal Authority**

Va. Code Ann. § 45.1-361.1 et seq., 4 VAC 25-160-140., and relevant Virginia Gas and Oil Board Orders ("Board") heretofore promulgated pursuant to law.

**4. Type of Well(s)**

Coalbed Methane

**5. Factual basis for relief requested**

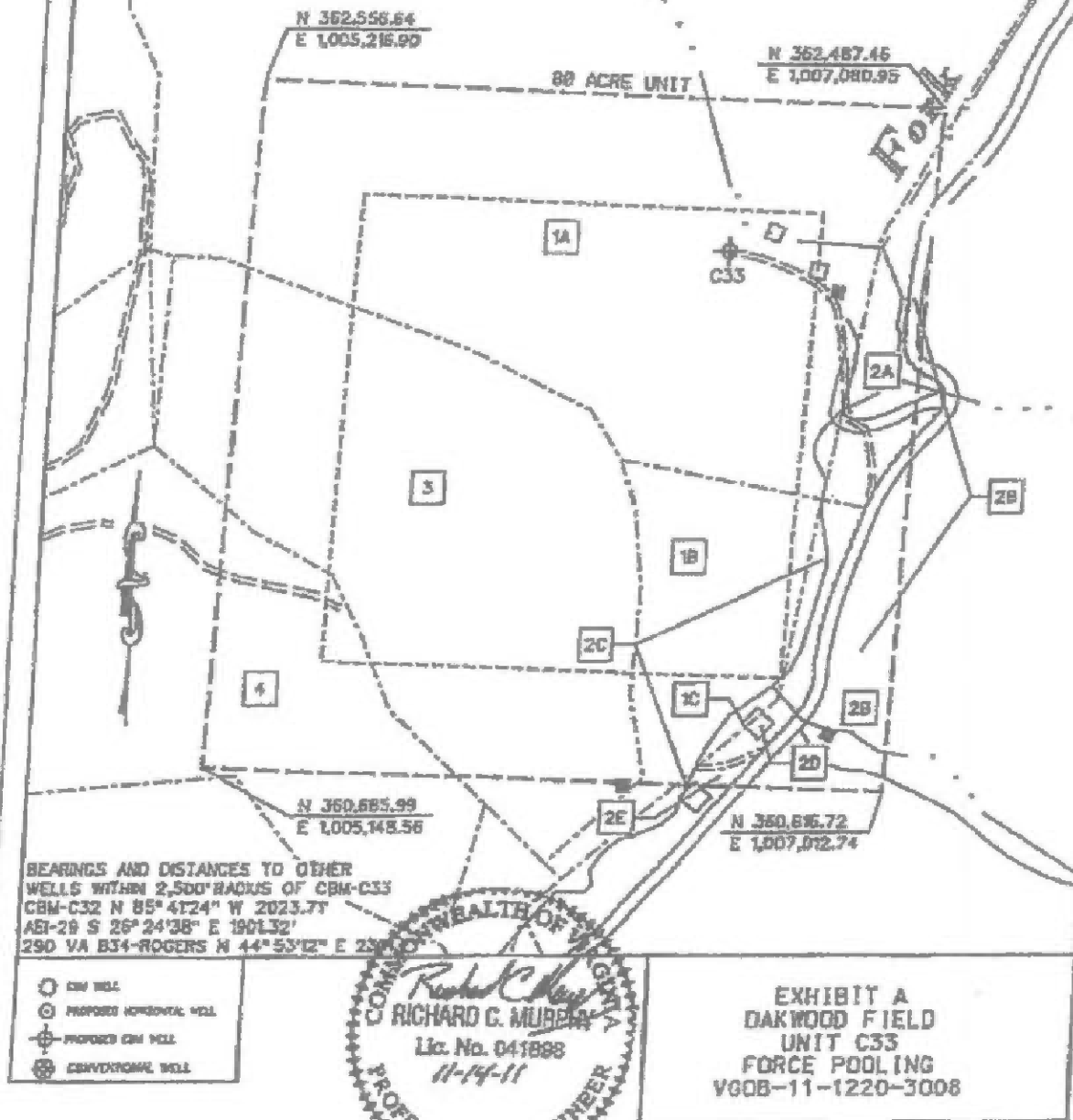
T.G. Rogers, III, Derek Browning Rogers, Kevin Rogers, Shaun Rogers, Gregory Poulos, Jason Poulos, and Pamela Poulos is entitled to 100% of the CBM royalties awarded under Case No. 550-13, Opinion dated July 10, 2014, Said decision allows the Applicant and Designated Operator to pay royalties directly to the person(s) identified in Exhibit EE annexed hereto and the annexed Table, further, specifies how said royalties are to be paid.

There are no remaining conflicts after the disbursement, escrow is no longer required and account is to be closed after disbursement.

**6. Attestation**

The foregoing Petition to the best of my knowledge, information, and belief is true and correct.

Property lines shown on this plat were provided by CNX Gas Company LLC and were taken from deed descriptions and chains of title of record. This does not represent a current boundary survey. This certification is as to the size, shape and location of the proposed unit.



Company CNX Gas Company LLC Well Name and Number UNIT C33  
 Tract No.                      Elevation                      Quadrangle PATTERSON  
 County BUCHANAN District GARDEN Scale: 1" = 400' Date                       
 This plat is a new plat X ; an updated plat                      ; or a final plat                     

Form DGO-GD-7  
Rev. 9/91

Richard C. Murrell (Affix Seal)  
Licensed Professional Engineer or Licensed Land Surveyor

**CNX Gas Company LLC****Unit C 33****Tract Identifications**

1. C. L. Ritter Lumber Company Tr. 28 (98.77 Acre Tract) -- All Minerals  
Island Creek Coal Company/Consol Energy, Inc. -- Coal Below Tiller Seam Leased  
Jewell Smokeless Coal Corporation -- Coal in Tiller Seam and Above Leased  
Hard Rock Exploration and Carter Oil & Gas - Oil and Gas Leased  
CNX Gas Company LLC - CBM Leased  
39.97 acres 49.9625%
- 1A. Ned R. Lovett, et ux - Surface
- 1B. Bobby Jean Horn - Surface
- 1C. Jesse Lee Horn - Surface
2. LBR Holdings, LLC (1232.67 Acre Tract) -- All Coal  
Island Creek Coal Company/Consol Energy, Inc. -- Coal Below Jawbone Seam Leased  
Reserve Coal Properties Company -- P-3 Seam Subleased  
Jewell Smokeless Coal Corporation -- Coal in Jawbone Seam and Above Leased  
LBR Holdings, LLC -- Oil and Gas  
EQT Production Company -- Oil and Gas Leased  
CNX Gas Company LLC -- CBM Leased (Geomet Farmout)  
9.28 acres 11.6000%
- 2A. Ned R. Lovett, et ux - Surface
- 2B. Unknown Surface Owner
- 2C. Bobby Jean Horn - Surface
- 2D. Jesse Lee Horn - Surface
- 2E. Truman A. Mullins, et ux - Surface
3. LBR Holdings, LLC (30.20 Acre Tract) -- All Coal  
Island Creek Coal Company/Consol Energy, Inc. -- Coal Below Jawbone Seam Leased  
Reserve Coal Properties Company -- P-3 Seam Subleased  
Jewell Smokeless Coal Corporation -- Coal in Jawbone Seam and Above Leased  
LBR Holdings, LLC, et al -- Oil and Gas  
EQT Production Company -- Oil and Gas Leased (75%)  
CNX Gas Company LLC -- CBM Leased (Geomet Farmout) (75%)  
Bobby Jean Horn - Surface  
24.38 acres 30.4875%
4. C. L. Ritter Lumber Company Tr. 39 (48.63 Acre Tract) -- All Minerals  
Island Creek Coal Company/Consol Energy, Inc. -- Coal Below Tiller Seam Leased  
Jewell Smokeless Coal Corporation -- Coal in Tiller Seam and Above Leased  
Hard Rock Exploration and Carter Oil & Gas - Oil and Gas Leased  
CNX Gas Company LLC - CBM Leased  
Billy Joe Kelly - Surface  
6.36 acres 7.9500%

"This title block is for general informational purposes only and does not reflect an analysis of the severance deed and its effect upon coal bed methane ownership and should not be relied upon for such purpose."

Exhibit E  
Unit C-33  
Docket #VGOB 11-1220-3008-01  
List of Respondents that require escrow

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	Acres in Unit	Percent of Unit
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Escrowing not required



List of Respondents with Royalty Split Agreements or Court Orders

	Acres in Unit	Percent of Unit	Percent of Escrow
<u>Tract #3, 24.39 Acres</u>			
<b><u>COAL OWNERSHIP</u></b>			
(1) LBR Holdings, LLC (30.20 acre tract) P.O. Box 22427 Lexington, KY 40522-2427	24.39 acres	30.4875%	n/a
<b><u>OIL &amp; GAS OWNERSHIP</u></b>			
(1) LBR Holdings, LLC, et al. (30.20 acre tract)	24.39 acres	30.4875%	
(b) T.G. Rogers, III 3014 Shalford Lane Matthews, NC 28104	0.76 acres 1/32 of 24.39 acres	0.9527%	12.5000%
(c) Derek Browning Rogers 2300 Carmel Road Charlotte, NC 28226	0.76 acres 1/32 of 24.39 acres	0.9527%	12.5000%
(d) Kevin Rogers 139 Wickham Road Garden City, NY 11530	0.76 acres 1/32 of 24.39 acres	0.9527%	12.5000%
(e) Shaun Rogers 121 NE 100th Street Miami Shores, FL 33128	0.76 acres 1/32 of 24.39 acres	0.9527%	12.5000%
(f) Gregory Poulos 1894 Glenwood St. NE Palm Bay, FL 32907-2423	1.02 acres 1/24 of 24.39 acres	1.2703%	16.6667%
(g) Jason Poulos 10870 SW 95th Street Miami, FL 33176	1.02 acres 1/24 of 24.39 acres	1.2703%	16.6667%
(h) Pamela Poulos 5000 SW 83rd Street Miami, FL 33143-8510	1.02 acres 1/24 of 24.39 acres	1.2703%	16.6667%
<i>*Prevailing plaintiff under Case No. 550-13 Awarded 100% of the CBM royalty.</i>			

## VIRGINIA: IN THE CIRCUIT COURT OF BUCHANAN COUNTY

GREGORY G. POULOS, JASON G. POULOS,  
PAMELA F. POULOS, SHAUN D. ROGERS,  
KEVIN H. ROGERS, DEREK B. ROGERS and  
T.G. ROGERS, III,

Plaintiffs,

v.

LBR HOLDINGS, LLC,

Defendant.

Case No. 550-13

**ORDER**

This matter, having come before the Court for hearing on June 2, 2014, on the parties' respective motions for summary judgment, and the Court, having reviewed the written submissions of the parties and having heard oral argument of counsel, and for good cause shown, hereby ORDERS:

1. Plaintiffs' Complaint and Defendant's Counterclaim both request that this Court, pursuant to Virginia Code § 8.01-184, declare their respective rights under the May 27, 1938, deed ("Deed") attached to Plaintiffs' Complaint as Exhibit "A."

2. The Deed includes a conveyance by T. G. Rogers and Martha F. Rogers, his wife (the "Talmage Rogers Group"), and Lloyd Rogers and Anne F. Rogers, his wife (the "Lloyd Rogers Group"), of their interests in certain parcels of property in Buchanan County, Virginia, (the "Property") and McDowell County, West Virginia, to Lon B. Rogers. The Deed specifically recites: "But there is excepted from the above-described property an undivided one-half interest in the oil and gas under said property and the same is reserved to T. G. Rogers and Lloyd Rogers,

parties of the first part, their heirs and assigns, together with the usual and necessary rights of ingress and egress and drilling rights to explore, get and remove said oil and gas.”

3. It is undisputed that Plaintiffs are the successors to the interests of the Talmage Rogers Group under the Deed, and that Defendant, LBR Holdings, LLC (“LBR”), is the successor to the interests of Lon B. Rogers and the Lloyd Rogers Group under the Deed.

4. Plaintiffs seek a declaration that the Deed’s reservation of gas under the Property includes, *inter alia*, coalbed methane gas, and that they are, therefore, the owners of 25% of the coalbed methane gas under the Property and entitled to the associated royalties. LBR, on the other hand, seeks a declaration that the Deed’s reservation of gas under the Property does not include coalbed methane gas, that the Deed, therefore, conveyed coalbed methane gas to Lon B. Rogers, and that LBR, as Lon B. Rogers’ successor-in-interest, is the owner of all the coalbed methane gas under the Property and entitled to the associated royalties.

5. Having examined the reservation language and the “four corners” of the Deed, the Court finds that the Deed is unambiguous and that the Deed’s reservation of “the oil and gas under said property” includes a reservation of coalbed methane gas under the Property. Plaintiffs are, therefore, entitled to prevail as a matter of law.

6. Coalbed methane gas is obviously “gas,” *see Harrison-Wyatt, LLC v. Ratliff*, 593 S.E.2d at 234, 238 (Va. 2004) (coalbed methane “is a gas”); and there is nothing in the Deed that removes coalbed methane or any other type of gas from the scope of the reservation. The language at issue is unlimited, plain, and unambiguous.

7. LBR argues that “the oil and gas” does not mean “all” but only “some” gas. The Court agrees with Plaintiffs, however, that the reservation of “the” gas is not a limited reservation of only some types of gas, but an unambiguous and unlimited reservation of all gas. Such an

interpretation of "the" is in accordance with the ordinary, plain and common sense meaning of the word.

8. LBR also argues that the parties to the Deed would not have intended to include coalbed methane gas in the reservation because, according to LBR, the commercial value of coalbed methane was not known in 1938. LBR presented no evidence in support of this argument and Plaintiffs presented undisputed evidence to the contrary. Regardless, this Court is bound to uphold the unambiguous reservation language, which refers to gas without qualification or limitation, and which, as written, encompasses all types of gas, whether commercially exploitable at the time of the Deed's execution or not.

9. The Court concludes that the arguments and authorities presented by Plaintiffs in their motion and reply brief are well-founded and correct. A ruling in LBR's favor would require the Court to rewrite the Deed, which it will not do. Nor will the Court torture words and phrases or engage in speculation to create an ambiguity where the ordinary meaning of the words leaves no room for ambiguity.

10. There are no issues of material fact in dispute regarding Plaintiffs' ownership of 25% of the coalbed methane gas under the Property. The Court grants Plaintiffs' motion for summary judgment in full and denies LBR's motion for summary judgment in full.

11. This Order constitutes a judicial determination of coalbed methane gas ownership as between Plaintiffs and LBR pursuant to Virginia Code § 45.1-361.22(5)(i) and resolves in Plaintiffs' favor all conflicting claims of coalbed methane gas ownership between Plaintiffs and LBR relating to the Property.

12. Plaintiffs are entitled to receive all coalbed methane gas royalties attributable to their 25% gas estate interest in the Property that are being held in the Virginia Gas and Oil Board's

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escrow account or otherwise being withheld from Plaintiffs due to the conflicting claims of coalbed methane ownership between Plaintiffs and LBR. Plaintiffs are also entitled to receive all future coalbed methane gas royalties or other proceeds that are attributable to their 25% gas estate interest in the Property. All such royalties and proceeds shall be divided among the individual Plaintiffs in accordance with their respective percentages of ownership.

SO ORDERED, this the 10<sup>th</sup> day of July, 2014.

  
Circuit Court Judge

SEEN AND REQUESTED:

  
Jennifer L. Shaver, Esq. (VSB# 79047)  
Ellis Professional Building, Suite A  
211 West Main Street  
Abingdon, VA 24210  
Telephone: (276) 525-1103  
Facsimile: (276) 525-1112  
jen@jenshaver.com

*Counsel for Plaintiffs*

SEEN AND OBJECTED TO FOR ALL THE REASONS DETAILED IN LBR HOLDINGS, LLC'S MEMORANDUM IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT AND RESPONSE TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND AT THE HEARING; AND ON THE ADDITIONAL GROUNDS THAT TO THE EXTENT THE COURT MAY HAVE CONSIDERED SUBMISSIONS OF EXHIBITS OTHER THAN THE DEED AT

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ISSUE, THE COURT SHOULD HAVE DENIED BOTH PARTIES' MOTIONS FOR SUMMARY JUDGMENT SO THAT BOTH PARTIES WOULD HAVE HAD AN OPPORTUNITY TO DEVELOP AND PROPERLY INTRODUCE SUCH EVIDENCE:

  
Trevor L. Earl, Esq. (VSB# 37573)

REED WEITKAMP SCHELL & VICE PLLC

500 West Jefferson Street, Suite 2400

Louisville, KY 40202

Telephone: (502) 589-1000

Facsimile: (502) 562-2200

tearl@rwsvlaw.com

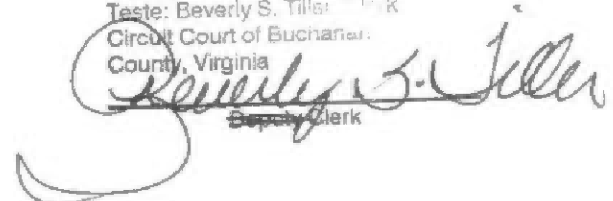


*Counsel for LBR Holdings, LLC*

INSTRUMENT #150001266  
RECORDED IN THE CLERK'S OFFICE OF  
BUCHANAN COUNTY ON  
AUGUST 4, 2015 AT 03:12PM

BEVERLY S. TILLER, CLERK  
RECORDED BY: GGB

A Copy  
Teste: Beverly S. Tiller, Clerk  
Circuit Court of Buchanan  
County, Virginia

  
Beverly S. Tiller  
Clerk